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Espionage law as a muzzle

I normally do not write about the First Amendment and about government efforts to censor or intimidate reporters and editors because I suspect many readers regard such articles as self-serving.

I am moved to make an exception in the case of Samuel Loring Morison. He is a naval intelligence analyst convicted last week in federal court in Baltimore on four counts of espionage and theft for giving secret photographs to Jane's Weekly, a British military publication.

Morison is the victim of a grave injustice. His is only the second case in which the espionage laws have ever been used to prosecute someone for turning government documents over to the press.

The first was the case of Daniel Ellsberg and Anthony Russo who gave the Defense Department's confidential history of the Vietnam War, the so-called Pentagon Papers, to the New York Times. That case was part of a deliberate attempt by the Nixon White House to frame two opponents of the Vietnam War. The case was thrown out of court because of government misconduct.

The espionage laws are meant to guard against people who give secret information to a foreign power with the intent of harming the interests of the United States. Handing documents to a newspaper or magazine that publishes them is considerably different from slipping them to a foreign government.

In addition to his regular job for the Navy, Morison had a "moonlighting" job as American editor for Jane's Fighting Ships, an annual reference volume published in Britain about the world's navies. This book is the bible in its field, and its annual publication is always the occasion for stories in the world's press.

People who write about military affairs regularly refer to it. Its information is so authoritative that I have always assumed that its editors must have the cooperation of Western intelligence agencies in compiling it. I was therefore not surprised that its American editor was himself a naval intelligence official.

The Navy knew about Morison's part-time job with Jane's and permitted it, although testimony in the trial indicated that his immediate superior disapproved of the relationship. The charge against Morison was that he gave Jane's Weekly three photographs taken by a US satellite showing a Soviet ship being constructed at a Black Sea shipyard. They were published in the magazine and widely reprinted.

A retired official of the Central Intelligence Agency testified that there was nothing of value to the Soviet Union in the photographs because the Russians obviously knew everything about their own ship and they had already obtained elsewhere a copy of the technical manual for the satellite.

Morison's conviction will be appealed. In theory, he could be sentenced to up to 40 years in prison and fined \$40,000. After he was convicted, the prosecutor said: "I would hope that people who are tempted to give out, in an unauthorized fashion, information relating to the national defense, stop doing it."

This is pompous nonsense. There is no espionage here. Morison is at worst guilty of an impropriety and deserving perhaps of a reprimand. If he is guilty of espionage, I would estimate that most of the reporters covering the Pentagon, the State Department and the CIA are likewise guilty for they have published secret information that has been leaked to them "in an unauthorized fashion." What is unusual in the Morison case is that he was both in the government and in the press; he leaked a story to himself.

The Morison prosecution is in line with the Reagan administration's relentless effort to control all sources of information and to manage the news to make itself look good. It is not concerned about leaks as such; it just wants to be certain that only its top officials and their designated spokesmen do the leaking.

No dissenters are to be allowed to blow the whistle and disturb official policy. No lesser official such as Morison is to be permitted to cut through rules and regulations that are often ridiculous and stultifying. That privilege is reserved for Henry Kissinger and other Very Important Persons who write their instant memoirs.

The Reagan administration professes to seek a fantasy known as total security. Let us hope that the higher courts do not permit them to invoke the espionage laws in their pursuit of this unholy grail.

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